

MINUTE ORDER

BLACK HILLS ONTARIO, LLC
705 East California Street
Ontario, CA 91761

Case No 5640-3
Facility ID 113240

Hearing Date 3/27/08

Hearing Type Short

Consent Calendar ☒

HEARING BOARD ACTION

Action Granted

Starting Date 4/1/08

Ending Date 6/29/08

RULE

2012, Appendix A (Protocol) Attachment C, Section B 2

EQUIPMENT DESCRIPTION

DEVICE/APPLICATION/PERMIT

Gas Turbine #1 with duct burner

D1 & D2

Gas Turbine #2 with duct burner

D4 & D5

CONDITION

- 1 Petitioner shall notify the Clerk of the Board in writing when final compliance is achieved

EXCESS EMISSIONS

None

REMINDER

In the event petitioner will be unable to comply with the final compliance date, a petition requesting a regular variance may be filed. To meet notice requirements, the petition **must be** filed no later than **May 8, 2008**. In the event the hearing is not needed and taken off calendar, petitioner may request a refund of 50% of the filing fee, however, petitioner will be responsible for the publication fee

Present:

Edward Camarena, Chair
Laurine E. Tuleja, Vice Chair
Joseph D. Auerbach, M.D.
Marti L. Klein
Barry Read

Representing the Petitioner: Not Present

Representing the Respondent: Not Present

BLACK HILLS ONTARIO, LLC - Case No. 5640-3

Petitioner's Exhibits:

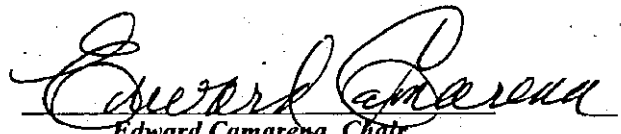
- #1 - Proposed Findings and Decision
- #2 - Joint Stipulation in Support of Petition for Short Variance
- *#3 - Declaration of Ron Hoffard In Support of Short Variance
- #4 - Email dated 3/25/08 to Clerk of Board from Theis
- #5 - Email dated 3/25/08 to Clerk of Board from Mueller

Motion.

CAMARENA/READ

5-0

**Board
Review/Approval**


Edward Camarena, Chair

Prepared by Rosalinda Diaz

*Entered into Evidence

**BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

In the Matter of)	CASE NO. 5640-3
)	Facility ID 113240
Black Hills Ontario, LLC)	
705 East California Street)	
Ontario, CA 91761)	
Order Granting a Short Variance)	
)	
Section 42350 of the California)	
Health and Safety Code)	
_____)	

FINDINGS AND DECISION OF THE HEARING BOARD

This petition for a Short Variance was heard on **March 27, 2008** on the Hearing Board's Consent Calendar, pursuant to notice in accordance with the provisions of California Health and Safety Code Section 40825. Five members of the Hearing Board were present during the proceeding: Edward Camarena, Chair; Laurine E. Tuleja, Vice Chair; Joseph D. Auerbach, M.D.; Marti L. Klein; and Barry Read. Petitioner, represented by John C. Mueller, Attorney at Law, did not appear. Respondent, Executive Officer, represented by Bryan Theis, Senior Deputy District Prosecutor, did not appear. The parties filed with the Hearing Board the Joint Stipulation in Support of Petition for a Short Variance, the Declaration of Ron Hoffard, and Proposed Findings and Decision of the Hearing Board. The public was given the opportunity to testify. Evidence was received, and the case submitted. The Hearing Board finds and decides as follows:

Nature of Business and Location of Facility

Petitioner operates two gas turbine cogeneration systems at its Facility located at 705 East California Street, Ontario, CA 91761. The primary purpose of the business has been to provide steam and electricity (about 5 MW) to an adjacent Sunkist plant and to provide additional electricity (about 5 MW) to Southern California Edison.

Equipment and Permit to Construct/Operate

The Facility consists of two gas turbine cogeneration systems, each equipped with a dedicated CEMS. The two turbines are designated in the Facility Title V Permit as "Gas Turbine #1 with duct burner, Device D1, D2, Permit No. 330846"; and "Gas Turbine #2 with duct burner, Device D4, D5, Permit No. 330845."

As a Cycle II NOx RECLAIM facility, Petitioner is required to perform a Relative Accuracy Test Audit ("RATA"), for each of the two CEMS. However, since December 2007, the Facility's two gas turbine cogeneration systems have been shutdown due to the shut down of the adjacent Sunkist Plant. Without Sunkist as the steam purchaser – or steam "host" – Petitioner as a "qualified facility" is not permitted to operate under Federal Energy Regulatory Commission regulations. In other words, this cogeneration facility is not allowed to operate for the sole purpose of producing electricity for Edison without producing steam for a host.

FINDINGS OF FACT AND CONCLUSIONS

Health and Safety Code Section 42352 provides that no variance shall be granted unless the hearing board makes all of the following findings:

- (1). **The petitioner is or will be in violation of any rule, regulation, or order of the District.**

Under the Facility's current Title V Permit to Operate, the CEMS must continue to undergo a RATA test within 6 months of the end of the calendar quarter in which the CEMS were last tested. The CEMS were last RATA tested in July 2007, the third quarter of the year. The CEMS would be required to be tested no later than March 31, 2008, i.e., six months after the end of the third quarter 2007. However, the Facility cannot perform the RATA as long as the adjacent Sunkist facility and the Facility's gas turbines are shutdown, as is presently the case. Accordingly, as of March 31, 2008, Petitioner will be in violation of Rule 2012, Appendix A (Protocol) Attachment C, Section B.2.

- (2). Due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business.**

Since the CEMS cannot be RATA tested due to the shutdown of the adjacent Sunkist facility and the gas turbines, it is beyond Petitioner's reasonable control to comply with Rule 2012, Appendix A (Protocol) Attachment C, Section B.2 by March 31, 2008. With the Facility's gas turbines shutdown, there are no NOx emissions produced by the Facility that could be RATA tested under Rule 2012, Appendix A (Protocol) Attachment C, Section B.2. Petitioner has applied to the District to be designated a Non-Operated Major NOx Source under Rule 2012 (c) (9), which will allow Petitioner to forego having to conduct RATA tests in the future. A Short Variance will allow Petitioner to continue to maintain its current Title V operating status pending the District's action on the application to be designated a Non-Operated Major NOx Source. Without a Short Variance there would be an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business since the Petitioner's Permits to Operate its two gas turbine cogeneration systems may be invalidated. Were that to occur, Petitioner could forfeit its NOx RECLAIM Trading Credits which have a current value of between \$3,000,000 and \$3,500,000.

On the other hand, if Petitioner were able to re-commence operation of the gas turbines for the purpose of conducting RATA tests -- which Petitioner asserts it cannot due under applicable FERC regulations -- the cost of the RATA would be approximately

\$10,000 for a source test firm to do the RATA test on both CEMS. It would also cost Petitioner an additional \$10,000 to burn the fuel necessary to perform the RATA test, since no electricity would be generated to set off the cost of the fuel burn.

- (3). **The closing or taking would be without a corresponding benefit in reducing air contaminants.**

Since Petitioner's gas turbine cogeneration systems are shutdown, there are no emissions from the Facility to the atmosphere. Thus, the closing or taking would be without a corresponding benefit in reducing air contaminants.

- (4). **The petitioner has given consideration to curtailing operations in lieu of obtaining a variance.**

Petitioner has given consideration to curtailing operations in lieu of obtaining a variance. Petitioner cannot curtail operations in order to bring the Facility into compliance since the gas turbines are already shut down. Curtailment would not obviate the requirement to perform the RATA by March 31, 2008.

- (5). **During the period the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible.**

There are no excess emissions since the gas turbines are shutdown. In fact, there are no emissions from the Facility at all due to the shutdown of the turbines.

- (6). **During the period the variance is in effect, the petitioner will monitor or otherwise quantify emission levels and report the emission levels to the District, if requested by the district.**

There are no excess emissions since the gas turbines are shutdown. In fact, there are no emissions from the Facility at all due to the shutdown of the turbines. Therefore, there are no emission levels to monitor or otherwise quantify and report. However, if the District

were to request quantification and reporting of emissions from the Facility, Petitioner is willing and able to do so.

ORDER

THEREFORE, good cause appearing, and having made the necessary findings, the Hearing Board orders as follows:

A. Petitioner is granted a Short Variance from the requirement of Rule 2012, Appendix A (Protocol) Attachment C, Section B.2., to conduct a RATA test on the CEMS dedicated to Petitioner's gas turbines located at 705 East California Street, Ontario, CA 91761. The subject equipment is designated in the Facility Title V Permit as "Gas Turbine #1 with duct burner, Device D1, D2, Permit No. 330846"; and "Gas Turbine #2 with duct burner, Device D4, D5, Permit No. 330845." The Short Variance is granted for the period April 1, 2008 through June 29, 2008, or until the Facility is designated by the District as a Non-Operated Major NOx Source under Rule 2012 (c) (9), whichever occurs first.

B. The variance granted herein is subject to the following condition:

1. Petitioner shall notify the Clerk of the Board in writing when final compliance is achieved.

C. There are no excess emissions associated with this Short Variance.

BOARD MEMBER:


Edward Camarena, Chair

DATED:

4/3/08

Prepared by John C. Mueller
and Reviewed by Bryan Theis